

Internal Market Bosnia and Herzegovina

**Almedina Sabanovic, MA; Amer Bekric, MA;
Darija Ramljak, MA; Dzenana Hodzic, MA;
Maja Ramljak, MA; Rade Jevtic, MA**
Mozaik Foundation

*Support to promotion of reciprocal understanding of
relations and dialogue between the
European Union and the Western Balkans*



Research paper in the area of internal market

Specific Grant Agreement RELEX I-2 190202 REG 4-14

Table of content

| | |
|--|-----------|
| SUMMARY | 3 |
| II. STABILISATION AND ASSOCIATION PROCESS | 5 |
| 1. STABILISATION AND ASSOCIATION AGREEMENT | 5 |
| 2. EU ASSISTANCE FOR INTERNAL MARKET INTEGRATION | 6 |
| III. TRADE RELATED ISSUES | 7 |
| 1. EU AS A TRADE PARTNER OF BOSNIA AND HERZEGOVINA | 7 |
| 2. REGIONAL TRADE RELATIONS OF BOSNIA AND HERZEGOVINA | 11 |
| IV. INTERNAL MARKET INTEGRATION | 12 |
| 1. FREE MOVEMENT OF GOODS | 14 |
| 2. FREE MOVEMENT OF PERSONS | 20 |
| IV.4. FREE MOVEMENT OF CAPITAL | 31 |
| 8. INTELLECTUAL PROPERTY RIGHTS | 41 |
| V. SUMMARY OF RECOMMENDATIONS | 45 |
| SHORT-TERM RECOMMENDATION | 45 |
| LONG-TERM RECOMMENDATION | 46 |
| VI. CONCLUSIONS | 48 |
| LIST OF ABBREVIATIONS AND ACRONYMS | 48 |
| SOURCES OF INFORMATION | |
| ACKNOWLEDGMENTS | |
| ANNEX I | 51 |
| DISCRIMINATORY MEASURES OF THE NATIONAL LEGISLATION OF BOSNIA AND HERZEGOVINA | 51 |
| “ARTICLE 4 | 53 |
| “ARTICLE 12 | 54 |
| “ARTICLE 87 | 54 |

Internal market in Bosnia and Herzegovina
Research paper

| | |
|---|------------------|
| “ARTICLE 89 | 55 |
| “ARTICLE 82 | 55 |
| <u>ANNEX II</u> | <u>56</u> |
| <u>BOSNIA AND HERZEGOVINA’S MEMBERSHIP IN INTERNATIONAL ORGANISATIONS AND CONVENTIONS RELATED TO THE INTERNAL MARKET</u> | <u>56</u> |

Summary

The overall aim of the research paper is to present problems and recent developments of the single economic space in Bosnia and Herzegovina (hereafter BH). Having in mind that the creation of the internal market within the EU gave great impetus to further integration of the Union as such, it is particularly important for constitutional structure of BH to have something similar like undertakings in the end of eighties and the beginning of nineties in the Union that brought to the creation of the internal market on the January the 1st 1993.

Having in mind the significance of the single economic space within BH from the standpoint of the Stabilisation and Association process short overview of the future obligations that will arise from contractual relationship with European Communities and its Member States will be outlined. Those contractual links will be in the form of Stabilisation and Association agreement. Also short glance will be given to the existing assistance of the European Union in the areas of concern. Since trade is of an utmost importance in the framework of Stabilisation and Association Process, trade related issues from the standpoint of the single economic space will be shortly outlined.

Single economic space can be seen from a broader perspective and can encompass all areas that could affect business activities. The area of research in this paper is focused on several areas of concern: free movement of goods, free movement of persons, freedom to provide services and the right of establishment, free movement of capital, customs, taxation, public procurement and intellectual property are also included in this research paper.

Wherever it was possible, research contains the following:

1. Short overview
 - reference to the Feasibility Study/ European Partnership (if any);
 - main achievements in the specific area;
 - important international agreements/memberships in the international organisations;
2. Institutional framework
 - main institutions in the specific sector: responsibilities, co-ordination, subordination;
 - deficiencies of the existing institutions, and possible improvements with regards of the implementation of the Acquis Communautaire;
 - measures taken for ensuring effective administrative capacity for implementation of existing legislation.
3. Legal framework
 - main laws regulating specific sector;
 - general evaluation of the legislation enforce;

- legislative activities within specific sector;
- where possible, identification of examples of discriminatory measures.

Discriminatory measures in national legislation of BH in the areas where they exist are presented. Some examples are shown in the Annex I, and they in particular relate to the freedom of movement of workers, taxation and freedom of movement of capital.

II. Stabilisation and Association Process

1. Stabilisation and Association Agreement

Contractual links: The Stabilization and Association agreement is the cornerstone and the main legal instrument for the completion of the Stabilization and Association process. Establishment of contractual relations after the completion of transition period and formal association with the EU is of great political importance for countries concerned. The agreement itself is based on gradual implementation of a free trade area and reforms designed to achieve the adoption of the EU standards. Such strategy of EU is based on a realistic expectation that the contract it enters into with individual countries will be fulfilled satisfactorily¹. The vital component of the Stabilization and Association process is careful preparation with each country before EU offers such a contract. The European Commission carefully examines the situation in each country with regards to political and economic criteria and the capacity of the country to take on the membership obligations. Unlike Europe agreements, crucial emphasis in Stabilization and Association agreement is the need for regional co-operation, as shown during the Zagreb summit (November 2000).

Although negotiations on Stabilization and Association Agreement are conditioned on lower criteria than in the case of the traditional Association Agreements (Europe Agreements) every country involved must meet the following minimum standards²:

- rule of law, democracy and compliance with human and minority rights;
- free and fair elections;
- absence of discriminatory treatment;
- implementation of first economic reform steps (privatization, abolition of price controls);
- proven readiness to engage in good neighborly relations;
- compliance with the terms of the Dayton Accord (only for BH, Croatia and Serbia and Montenegro).

All told, the basic principle for the EU membership will continue to be: "First transformation, then integration". Prior to accession, every candidate country has to meet the Copenhagen criteria.

The Stabilization and Association agreement includes following areas: political dialogue, regional co-operation, free movement of goods, workers and capital, freedom to provide services, establishment, harmonization of legislation, co-operation in the field of justice and home affairs, co-operation policies, financial co-operation, institutional, general and final provisions³.

¹ See: http://europa.eu.int/comm/external_relations/see/actions/sap.htm

² see: Andreas Wittkowsky, *Stability through integration?*, Series Eurokolleg 43, Berlin, 2000

³ See: Stabilization and Association Agreement with Republic of Croatia, <http://mei.hr>

2. EU Assistance for internal market integration

Having in mind the importance of the creation of the Single economic space in BH, EU strongly supports its creation. Even in the CARDS Strategy Paper this area is highly emphasised.

The EC Strategy Paper stresses this area under the priority areas for intervention: “Economic Reform and Development” with the aim of facilitating the creation of the single economic space in BH compliant to the *Acquis Communautaire*.

Based on the above-mentioned Strategy Paper, European Commission regularly prepares Multiannual Indicative program (MIP) for certain period of time.

The MIP for the period 2002-2004 highly stressed the following areas:

- Democratic Stabilisation,
- Administrative Capacity Building,
- Economic and social Development,
- Environment and Natural Resources,
- Justice and Home Affairs.

In this period assistance was mainly directed to the area of Democratic Stabilisation.

Areas from the previous MIP were accepted as the same areas for intervention in the MIP 2005-2006. Unlike in the past, this Programme was developed with high involvement of the BiH authorities, mostly through the Directorate of European integration. Shift has been made from the past MIP into the areas that will reflect further economic development, and in particular the creation of the single economic space.

In the period 1996- 2000, European Communities under the Phare-PRAQIII programme assisted the area of the Freedom of movement for goods – Namely Standardisation, Metrology, Conformity Assessment, Accreditation, Technical Regulations, and to the limited extent Market Surveillance.

In the period 2001-2002, European Commission supported the creation of the single economic space in BH through the “Single economic space” programme worth 600.000 EUR. The main beneficiary of that programme was at that time Ministry of European Integration. The programme was directed mostly to the horizontal issues of the creation of SES, and to the particular issues at the concern at that time – from technical regulation, phyto-sanitary protection, public procurement etc. those issues of concern were mostly related to the fulfilment of the so-called Roadmap requirements as a precondition for the

start of the Feasibility study for the assessing readiness of BH for contractual relationship with the European Communities and its Member States.

Currently, European Commission supports SES creation in the framework of the ‘Single Economic Space II’ project, with three main areas of intervention: competition, consumer protection and technical regulations. From the standpoint of this research paper the third component is of interest. There TA project supports the working groups in drafting necessary framework legislation, assisting companies in achieving technical documentation for products base on the European directives.

There are number of project covering the issues related to the creation of SES in BH, like TA in establishing Public Procurement legislation. Technical assistance in the area of Insurance assisted BH in drafting framework insurance legislation. Now it is conditionality to fully implement this legislation in order to obtain the right for further assistance in this area which is foreseen.

CAFAO is the office which is established in order to assist BH Authorities in Customs and Taxation reforms. EC through the CARDS programme fully supports the work of CAFAO. The main partner in implementation of reforms to CAFAO from the BH side is the Indirect Taxation Authority. (ITA)

One of the CARDS Regional programmes is in the area of Intellectual Property rights, with its main office in Belgrade, fostering regional co-operation and exchange of experience in this tremendously important area for international trade.

Based on the decisions of the last year Thessalonica summit of historical importance for SAP countries, BH has been invited to participate in the TWINNING and TAIEX programmes. In the framework of TAIEX facility a number of seminars have been organised for the officials of BH in the area of single economic space. Amongst the other, it is worth noting the following areas where seminars have been organised during the summer 2004: VAT, Customs administration, Intellectual Property Rights, Public Procurement, Internal Market Acquis (freedom of movement of goods and mutual recognition principle, banking directives, takeover bids directive, freedom to provide services and freedom of establishment, professional recognition, accounting and audit, company law), veterinary legislation, phyto-sanitary legislation.

It is planned to assist Ministry of Foreign Trade and Economic Relations, the most relevant ministry from the standpoint of the creation of single economic space in BH.

III. Trade Related Issues

1. EU as a trade partner of Bosnia and Herzegovina

In the framework of the Stabilisation and Association Process and in order to facilitate economic development of the SAP countries Council on the basis of the proposal

from the Commission adopted set of the Autonomous Trade Measures⁴. Now those measures provides legal basis for trade with EU member states. With further progressing within the SAP, and with the negotiation on an SAA, there will be a change in a form of trade relations between BH and EU. The major part of future SAA will be the formation of free trade area on an asymmetrical basis in favour of BH. By the conclusion of an SAA the set of ATM will remain in force. The only possible threat is the duration of an ATM – 31st of December of 2005. Based on the current situation on the ground there is a very minimal probability that the Stabilisation and Association agreement will be negotiated by that time and that will an Interim Agreement with trade-related measures will come to the force. Therefore the only possible solution is further extension of existing set of ATM by the time when Interim Agreement will become effective.

The set of measures encompasses roughly 95% of all traded goods. Those goods covered by the regulations can get duty-free access to the EU market provided that they are of BH origin and satisfying requirements of EU applicable legislation and standards. Now, four years after introduction of those very favourable measures for BH⁵, it can be assessed that BH economic operators have not yet sufficiently used opportunities of putting BH goods to the EU market based on those measures

There are a number of reasons for non sufficient utilisation of ATM, they can be summarised as follows:

- BH economy was almost totally destroyed during the war and still not fully recovered. BH has been in the process of post-war reconstruction and transition to the market economy at the same time. At the present time there are few factories which produce, and at the same time there is a high level of competition at the EU and BH markets so BH producers can hardly be competitive both in terms of price and required quality,
- ATM, and generally SAA later require that all goods placed to the EU market are produced in such a way that they satisfy all requirements of the EU legislation and standards applicable to those goods. In the area of industrial goods, with practically no any limits for the placement on a "no any restriction" basis to the EU market, there is possibility for producers to obtain certificates on the conformity of their goods in EU member states. This evidently makes those industrial products more costly due to the conformity assessment procedure done abroad. With regards to the agricultural goods, for which ATM provide for an unlimited access to the EU internal market except for several goods⁶, it is worth noting that there is no possibility for producers to obtain certificates for their goods abroad. For example, meat can be exported to the EU market

⁴ Autonomous Trade Measures – ATM – The set of a very favorable measures, unilaterally introduced by the EC by the Council Regulation 2007/2000 from 18th of September and amended by the Council's Regulation 2563/2000 from 20th November 2000 in order to extend timing of the application of those measures by the 31st of December 2005 or by the date of enforcement of an Interim agreement, which will be negotiated together with and SAA and this agreement encompasses, amongst other, trade related issues. Then they will not be unilateral any more, but asymmetrical in favor of Bosnia and Herzegovina.

⁵ and other four countries of SAP process

⁶ Sensitive agricultural products like baby- beef, vine

Internal market in Bosnia and Herzegovina

Research paper

only if the slaughter was done in the slaughterhouses registered for EU export within the country. This issue is tightly interrelated with an issue of the creation of the single economic space within the country.

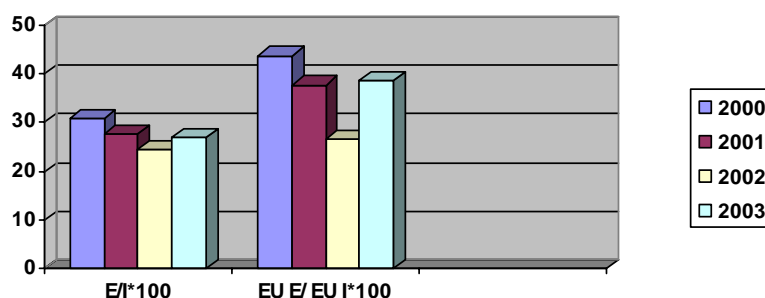
- The third issue that affect export possibilities, but to the minor effect in comparison to the two previously mentioned is an issue of the certificates of origin.

Table⁷ gives an overview of the Export/Import in KM (1EUR=1,9558KM) in millions KM

| Year | Export* | Import* | E/I*100 | EU Export | EU import | EU E/ EU I*100 | EU E/ E | EU I / I |
|------|---------|---------|---------|-----------|-----------|----------------|---------|----------|
| 2000 | 2491 | 8058 | 30,9 | 864 | 1971 | 43,8 | 34,7 | 24,4 |
| 2001 | 2480 | 8950 | 27,7 | 849 | 2245 | 37,8 | 34,2 | 25,1 |
| 2002 | 2296 | 9319 | 24,6 | 636 | 2386 | 26,7 | 27,7 | 25,6 |
| 2003 | 2585 | 9628 | 26,8 | 792 | 2347 | 38,7 | 30,6 | 24,3 |

* with adjustments

Even there are no fully reliable data in BH, this overview does not show any relationship between introduction of ATM and higher export to the EU markets.



Graph: Coverage exports/imports in % - first graph total figure, second graph EU

Graph shows that there is no interrelation with the introduction of ATM, but generally the coverage is better with the EU than if we look trade in general.

Proximity of Croatian and SICG markets of the EU market is leading to the higher level of trade exchange that with the EU market.

⁷ data based on the Bulletin 4/2003 of Central Bank of Bosnia and Herzegovina

Internal market in Bosnia and Herzegovina

Research paper

If we look into the structure of export and import, the analysis will outline only examples of goods with highest⁸

Export of goods

| Commodity group | Percentage distribution |
|--------------------------------|-------------------------|
| Mineral products | 9,53 |
| Wood & wood products | 17,2 |
| Base metals & articles thereof | 21,48 |

Import of goods

| Commodity group | Percentage distribution |
|-----------------------------------|-------------------------|
| Prepared foodstuff | 13,42 |
| Mineral products | 11,24 |
| Machinery & mechanical appliances | 16,67 |

The structure of export shows that BH exports mainly non-sophisticated basic products

Introduction of the set of Autonomous Trade Measures⁹ by the Commission in 2000 obviously did not have expected positive results in terms of reduction of trade deficit due to the non-existence of institutions in BH responsible for completing the procedure necessary for legal placement of BH products to the market of EU.

In the framework of the work on the first Development strategy (PRSP) document “Strategic trend in development of Foreign Trade and Encouraging Export” is prepared. European Commission welcomed the first document of such type and recommended to further develop it in terms of:

- Importance of capacity to analyse in order to prepare for negotiations for SAA and WTO.
- Inclusion of stakeholders in the process in order to inform them on the objective of the government,
- Trade should not be seen separate. Trade-related issues from a broader perspective should be taken into consideration (trade in service, public procurement, intellectual property, investment, technical standards...)
- Trade in services should be put in focus.
- Domestic reforms should be put in relation to positive influence of these reforms on trade.
- Further liberalisation of trade should continue.

⁸ data based on the Bulletin 4/2003 of Central Bank of Bosnia and Herzegovina

⁹ introduced by Council Regulation No 2007/2000 from 18th of September 2000, amended by the Council Regulation 2563/2000 from 20th November 2000

Stabilisation and Association Report 2004 and European partnership further emphasise the importance of trade as one of the main parts of future Stabilisation and Association Agreement.

2. Regional trade relations of Bosnia and Herzegovina

With the main purpose to prepare the whole region for gradual increase in competition, namely through an open and liberalised trade Initiative of the Stability Pact fostered the signature of the network of free trade agreements between the Stability pact participants. All the SAP countries have signed among themselves the Free Trade Agreements.

Table: Overview of the FTAs between BH and SAP countries and other countries of the South East- Europe¹⁰¹¹

| Country | | Signed | Ratified | Enforce | Note |
|---------------|-----------|------------|-----------------------|------------|---|
| SAP countries | Albania | 28.04.2003 | Albania 10.07.2003 | | “Official Gazette of BH”, No 8/04, published 5/10/2004 |
| | Croatia | | | 01.01.2001 | OG |
| | Macedonia | | | 01.07.2002 | OG |
| | S&M* | | | 01.06.2002 | OG |
| Bulgaria | | 16.10.2003 | | | “Official Gazette of BH”, No 9/04, published 13/10/2004 |
| Romania | | 08.04.2003 | | 01.01.2004 | “Official Gazette of BH”, No 6/04, published 14/09/2004 |

* S&M – Serbia and Montenegro, in some of the FTA can be found as Federal Republic of Yugoslavia

At the beginning of 2004, BH, on the basis of previous consultations temporarily suspended application of FTA with neighbours on the period of three months. From 1st April 2004 they are fully in force.

¹⁰ European Economy, Occasional Papers No 5 “Western Balkans in Transition”, January 2004, DG ECFIN
ISSN 1725-3209, page 9

¹¹ Official journals of BH

IV. Internal Market Integration

In order to qualify for contractual relationship with EU BH needs to prove internal integration within the country provided it has integrated obeying to the rules of European Union.

Based on the BH Constitution¹² there is a basis for the formation of the internal market within BH. Article I 4 of the constitution provides for a legal basis and an obligation for the creation of the internal market within BH enabling the “four freedoms”. However, there are also legal constraints in the constitution for deeper integration of the market of BH, namely they are contained in the so-called “catalogue of subsidiarity” article. This is article III 1 which limits competencies of the state to the minimum leaving the whole range of economic policies at the entities level.

European Union in its relationships with the region, and in particular, BH, has been continuously reiterating the necessity of the creation of the single economic space from the atomised markets in the contemporary after-war history. In the past in the set of preconditions for the starting of conduction of the Feasibility study Commission emphasised the issue of economic integration of the country so much that almost half of 18 precondition from the so-called Roadmap for BH were related to the issue of single economic space in BH.

In assessing BH readiness for contractual relationship European Commission concluded that country will be ready for the start of negotiations of the SAA as soon as it proves achievement of substantial progress in 16 very carefully selected areas¹³. Two areas relevant for this research paper are¹⁴:

- Customs and Taxation Reform, with the requirements to do the following:
 - o Proceed with implementation of the recommendations of the Indirect Tax Policy Commission. Ensure parliamentary adoption of the Law on the Indirect Tax Authority, including the adoption of the related enabling legislation. Ensure implementation, including appointment of a Director for the Indirect Tax Authority and the functioning of the new customs authority. Demonstrate progress in preparing the introduction of VAT with a view to beginning on schedule.
- Consistent trade policy, with the following requirements:
 - o Establish a coherent and comprehensive trade policy and revise existing legislation to ensure a consistent policy on free zones. Establish at State-

¹² Dayton Paris Peace Agreement, Dayton, Ohio, USA 1.-21. November 1995 – Annex 4 represents Constitution of Bosnia and Herzegovina

¹³ Famous “YES BUT”

¹⁴ COM (2003) 692

level certification and other procedures for the export of animal products and a phyto-sanitary office that are EC-compatible, with a view to promoting export, but also enhancing standards and the single economic space

○ , and

- Development of BH single economic space, with the following requirements:
 - Establish the Competition Council. Introduce provisions on the mutual recognition of products in the legal order of BH and implement a consistent and effective public procurement regime throughout the country. Remove all duplicate licences, permits and similar authorisation requirements to allow service providers (including financial institutions) to operate throughout BH without having to fulfil unnecessary administrative requirements. Create a single business registration system that is recognised throughout BH

First European Partnership¹⁵ from March 2004 emphasised the need to address single economic space issues as well. Short-term priorities include all from the Feasibility study and in addition:

- Respect of international standards
 - Ensure the quick, complete and faithful implementation of all negotiated free trade agreements
- Certificates of origin, with the main task to
 - Ensure the reliability of all BH certificates of origin

In the medium-term¹⁶ European Partnership foresees following areas to be adequately addressed by the BH Authorities:

- Single market and business,
- Trade management capacity,
- Trade standards,
- Customs and Taxation

¹⁵ Council Decision on the principles, priorities and conditions contained in the European Partnership with Bosnia and Herzegovina, COM (2004) final

¹⁶ in the period 3 to 4 years, mainly by 2007

1. Free movement of goods

4. Short overview

Significance of the freedom of movement of goods have been strongly emphasised during the European integration. It is even considered as a motor of integration of the internal market setting up principles which have been paving the way for further integration in the other fields. Mutual recognition principle is a typical example of such fostering of principles.

European Acquis in this area is based on two principles:

- general schematised principle – the new principle introduced in the time of vigorous creation of internal market of the EU in the end of eighties and beginning of nineties, which encompasses New approach and a Global Approach, heavily dependant on voluntary standardisation, metrology, conformity assessment and accreditation, and
- old sectoral approach with detailed technical rules included in the directives.

Modern market of EU is mostly regulated on the first approach from the above. For BH, this system was unknown before the war, so these systems have been established from the zero.

In BH it is particularly important having in mind very low level of industrial production in the years after the war and huge foreign trade deficit. Additional burden to the freedom of movements of good is more than not necessary. Therefore integration of atomised market of BH is not welcomed but necessary.

Recognising the importance of this freedom, European Commission in its Feasibility study recommended several measures to be fulfilled by BH as a precondition for further integration with the Union. This has been addressed by BH Authorities in the form of a Programme of the Council of Ministers of BH¹⁷, particularly recognising the importance of the freedom of movements of goods from the standpoint of growth potential since legislation from this area mainly enables export and can beneficially effect on a huge trade deficit.

The measures from the Programme, which fall under the scope of this research, are:

Completing outstanding Road Map steps (priority area 1) related to:

- Formation of the Institute for Standards and ensure its full functioning
- Formation of the Institute for Metrology and ensure its full functioning
- Fully implement the Law on the formation o the Institute for Accreditation

Consistent Trade Policy (priority area 13) which means:

- Establish a coherent and comprehensive trade policy

¹⁷ Programme adopted by the Council of Ministers of Bosnia and Herzegovina

- Draft and adopt a comprehensive and coherent foreign trade policy paper in order to decrease foreign-trade deficit and promote export
- Framework laws on free movement of goods
 - o Law on technical requirements and conformity assessment in line with EU Acquis,
 - o Law on market surveillance in line with EU Acquis.
 - o Law on general product safety in line with EU Acquis,

Priority Area 15 – Development of single economic space

Requiring introduction on the mutual recognition of products in the legal order of BH and strengthening of the Quality Infrastructure, with following specific measures:

- Foster the development of standards, accreditation and metrology and support the establishment/upgrading of conformity assessment infrastructure,
- Ensure de jure State-wide recognition/acceptance of technical specification and conformity assessment results,
- Adoption of the Programme of implementation of technical legislation

In its First European Partnership European Union recommends to the Authorities of Bosnia and Herzegovina to tackle further the issue of free circulation of products. Therefore, within short term European partnership priorities, two things are strongly emphasized:

- Certificates of origin related to ensuring the reliability of all BH certificates of origin,
- Respect international standards in order to ensure the quick, complete and faithful implementation of all negotiated free trade agreements.

European partnership requires further strengthening of the institutes for standards, metrology and access of business to those functions of the state.

In the mid term period, it also requires creation of a regulatory environment for technical standards in line with EU standards.

Roadmap requirements in the past, amongst 18 steps to be fulfilled in order to qualify for the Feasibility study, included requirement for the setting up of a Standards institute. As a result of the work of the working groups of CTF¹⁸ regulatory framework for the systems of Standardisation, Metrology and Accreditation have been established. Also Institute for Standards, Metrology and Intellectual property and Institute for Accreditation were set up.

Mentioned regulatory framework enabled establishment of the systems of Standardisation, Metrology and Accreditation fully in compliance with the European standards.

¹⁸ CTF – Consultative Task Force – Joint body comprising representatives of BH and EC Authorities, in the past in addition to the ‘normal’ function of the CTF – which is ‘measurement of progress in fulfilling European tasks’ – had a function of a working groups were laws had been agreed and attitudes reconciled

Following the requirements derived from the Feasibility study, decision was taken to divide Institute for Standards, Metrology and Intellectual property into three separate institutions in order to comply with European standards. Recently those laws on separation of institutions were adopted by the Parliamentary Assembly of BH¹⁹. Now institutional building activities are under way. According to Decision of Council of Ministers, Institutes for Standards will be placed in Lukavica, Institute for Metrology will be placed in Sarajevo and Institute for Intellectual Property will be placed in Mostar. Activities related to appointments of Directors for those Institutes, are started.

In the area of the quality infrastructure, BH through Institutes is a member of a number of European and International Organisations. It is important to stress that those tasks related to the memberships requirements which were possible to be completed by the Institutes were completed and those depending on the "state" are in the process of completion. In the Annex 2 overview of the memberships of BH is given.

MAIN ACHIEVEMENTS IN THE SPECIFIC AREA

The BH Institute for Standards, Metrology and Intellectual Property is able to implement european and international standards on a permanent basis, consistent with its plans. Inadequate staffs number and financing slow the process of incorporating these standards into the BH Standardization system and replacing JUS standards with BAS standards. Of the total number of BAS standards, 60% are EN standards, amounting to 28% of the total number of published EN standards.

Until now 6605 of BAS (BH standards) are published and 1707 of BAS is in process of preparation.

According the official data, The Institute for Standards, Metrology and Intellectual Property employs 62 associates (situation from 2000).

The Institute is engaged in activities:

- adoption (taking over) of standards
- certification of technical products
- authorizing bodies for certification and inspection of products and supervision under those bodies
- intellectual property protection
- activities in measurements

The Institute only partially assesses the harmonization area. Sector for certification, together with authorized certification bodies, has certified several hundreds of products. Imported products are included for which the Institute issued domestic certificates mainly on the bases of recognition of documents on harmonization (reports on assessment ...).

The Institute has authorized 11 bodies altogether for products certification and 4 bodies for inspection on the base of a previous conducted process of qualification assessment.

¹⁹ Laws on separate Institutes for metrology and intellectual property are published in Official Gazette No. 43/04, 22. 09. 2004. The Law on separate Institute for Standardisation is published in Official Gazette No. 44/04, 01.10. 2004.

During the first quarter of this year, Institute issued 10 certificates (3 for imported products and 7 for domestic products), and bodies under its responsibility issued 18 certificates. Certificates are related to gas, construction and electrical facilities and equipments.

Regarding area of accreditation, it should be mentioned that the Institute for Accreditation, in accordance with the Law on Accreditation, has given the accreditations for 19 bodies for conformity assessment in BH:

- 9 inspection laboratories
- 3 calibration laboratories
- 2 bodies for the certification of products and
- 5 inspection bodies.

In different phases of the accreditation process there are five more bodies for conformity assessment.

IMPORTANT INTERNATIONAL AGREEMENTS/MEMBERSHIPS IN THE INTERNATIONAL ORGANISATIONS

The BH Institute for Standards, Metrology and Intellectual Property is an associate member of CENELEC (since 1999), a corresponding member of CEN (since 1997) and a full member of ETSI (since 1997).

The BH Institute for Standards, Metrology and Intellectual Property is a full member of ISO (since 1997) and of IEC (since 1997).

Intensive work on the adoption of standards is leading towards membership of CEN and CENELEC. The Institute plans to become a member of the International Federation of standards users, IFAN.

5. Institutional framework

Currently, based on the legislation from 2001 there are

- Institute for Standards, Metrology and Intellectual Property of BH, and
- Institute for Accreditation.

There is no adequate body at the state level which is clearly in charge for Technical regulation. Based on the last reform of Council of ministers, it is clear that everything that relates to the single economic space is by definition under the scope of the Ministry of Foreign Trade and Economic Relations of BH. Recently new rulebook has been adopted, and moderately small unit will be formed to start tackling the technical regulation issues. This unit is not yet staffed, but even after staffing is completed this will not be sufficient to enable adequate capacity building for the technical regulations.

Institute for Standards, Metrology and Intellectual Property, in the area of Quality Infrastructure is in charge for the following:

Institutional building activities might include possible nomination of an Acting Director (in accordance with Article 38 Law on Civil Service) until the procedure of the selection of the Director is completed. Identification of suitable premises due to the specific requirements for the technical infrastructure might also pose a problem. Based on the newly proposed legislation Standards institute will move to Lukavica (Republika Srpska – close neighbourhood of Sarajevo). Metrology institute will stay in Sarajevo where there are premises in the ownership of the institute, albeit they are not satisfactory from the standpoint of the space and needed technical characteristics of the premises needed for very sensitive metrological equipment.

Existing institutions are understaffed with further tendency of high level of staff turnover. Structure of trained staff

Having in mind requirements of the Chapter 1 of Acquis Communautaire, and the requirements of global trade, there is a need to have functioning systems from the area of quality infrastructure.

6. Legal framework

BH has an accreditation system at the state level, based on two laws: the Accreditation Law of BH²⁰ and the Law on formation of the Accreditation Institute of BH²¹. The system is independent of any state influence.

The legal basis for standards is the Law on Standardization²². Pursuant to this Law, administrative and professional tasks in this domain are performed by the BH Institute for Standards, Metrology and Intellectual Property.

Until November 2000, the legal basis for technical regulations, conformity assessment, accreditation, certification, metrology and market surveillance was the 1994 Standardization Law. In January 2001 a set of laws was adopted: Law on the formation of the BH Institute for Standards, Metrology and Intellectual Property (BASMP), BH Standardization Law, Law on formation of the BH Accreditation Institute (BATA), BH Accreditation Law, BH Metrology Law, and Law on Units of Measurement. The new Standardization Law, which deals only with issues of standards, raises a question mark over the status of the 1994 Standardization Law, which deals with a range of issues concerning technical regulations, conformity assessment, certification, market surveillance etc. When it was repealed by the new Law, all these other activities were left without a legal basis. The Law on the technical

²⁰ Official Gazette of BH no. 19/01

²¹ Official Gazette of BH no. 10/02

²² Official Gazette of BH no. 19/01

requirements of products and conformity assessment should already have been adopted; since it has not, the 1994 Standardization Law and the technical regulations inherited from former Yugoslavia are still being applied.

As regards metrology, pursuant to the Law on the BH Institute for Standards, Metrology and Intellectual Property, the Institute is responsible for assessing conformity of measures (including instrument type testing), setting, safeguarding and maintaining standards, ensuring that they comply with international standards, issuing publications, international cooperation, the implementation of projects or parts thereof relating to metrology, academic research work in the field of metrology, the verification and calibration of standards, the appointment of laboratories, monitoring the implementation of the BH Metrology Law. The BH Metrology Law provides for the existence of Entity Metrology Institutes. The jurisdiction of the Entity Metrology Institutes is confined solely to the verification of measures (which may also be performed by laboratories appointed by the director of the Institute).

Administratively, BASMP handles certification and conformity assessment, but has neither the facilities nor the authorization to issue technical regulations or conduct market surveillance.

The functions of standards, conformity assessment, certification and metrology are divided among the different BASMP sectors, but do not yet cover the whole of BH, since BASMP is not yet sufficiently developed organizationally, because of obstruction in RS and part of the Federation of BH (so-called Herceg Bosna).

Accreditation is carried out by BATA.

The set of laws establishing the systems of Standardisation, Metrology and Accreditation are done by the experts acquired experience on European models in the framework of Phare-PRAQIII Programme. Therefore the legal basis for those systems is absolutely compatible with EU Acquis.

First solution which enabled establishment of the Institute for Standards, Metrology and Intellectual Property of BH taken into account heavy budgetary constraints and gave possibility of the usage of common and financial services by three divisions. Taking into account European solutions, Accreditation has been separated from the beginning. In the course of time, conclusion was made that it would be more efficient to separate Institute for Standards, Metrology and Intellectual Property of BH into three independent institutions

Current activities:

- In addition to the mentioned legislation, based on the EC requirements the laws that further regulate this sector are adopted by PA of BH:
 - o Law on technical requirements and conformity assessment in line with EU Acquis,
 - o Law on market surveillance in line with EU Acquis.
 - o Law on general product safety in line with EU Acquis,

2. Free movement of persons

1. Short overview:

Free movement of workers is one of the fundamental freedoms enshrined in the Treaty; freedom to practice certain professions (e.g. in the legal and health fields) may, however, be subject to certain conditions, such as qualifications. Depending on the case, these may be dealt with through coordination or by applying the principle of mutual recognition. Freedom of establishment is also guaranteed under the Treaty and covers the economic activity of self-employed natural persons and companies.

The free choice of place of residence may thus be subject to minimum conditions as to resources and health insurance where the person does not exercise a profession in the country concerned.

SAA with BH, among other things, is going to provide non-discriminatory treatment of workers who are legally employed in BH (as well as their families). This also concerns BH citizens legally employed in the EU. This is going to include the possibility of cumulating or transferring **social security rights** and encourage EU member states to conclude bilateral agreements with BH on access to labor markets.

Due to specific constitutional structure of BH, where the field of labor, social insurance and education are under the competence of entities (Federation of Bosnia and Herzegovina - FBH and Republic of Srpska - RS), the first problem that BH authorities have had to cope with is to remove all obstacles to free movement of domestic workers within BH. In this way, the domestic workers would be allowed to transfer pensions, health insurance and educational rights from one Entity to another.

However, it seems that things are moving forward, especially due to the fact that the Law on the Council of Ministers (from 2000) has established, among others, a state-level Ministry of civil affairs. The competences of this ministry also include issues of employment, education, insurance, which are of importance for full establishment of the freedom of movement of workers and further adjustments and preparations for the full implementation of the future SAA and eventually, full membership of BH in the EU. Besides that, according to the Rule Book of this Ministry, the state-level Employment Institute is expected to be fully operational.

Out of these reasons, and due to specific structure of the country, the free movement of domestic workers is going to be elaborated first, and then the free movement of workers from the EU prospective.

2. Institutional framework

Institutional framework in this area consists of the web of institutions on different levels, which is even more complicated by the fact that Federation and RS have different structure and distribution of authorities (RS – unified, more centralized system, FBH – decentralized system, where most of the competences are reduced to the level of cantons).

3. Legal framework

In March 2000, the authorities responsible for pensions and disability insurance in the FBH, of which the principal successor is the Federal Pensions and Disability Insurance Institute, and the RS Public Pensions and Disability Insurance Fund, concluded an agreement on mutual rights and obligations relating to pensions and disability insurance. This agreement entered into force on 18 May 2000, after receiving the assent of the Entities' governments. The legal basis for the Agreement is Article 82 paragraph 4 of the Law on Pensions and Disability Insurance²³. The Agreement provides for the beneficiaries of pension and disability insurance rights to exercise those rights with the provider that was paying the pension on the date the Agreement entered into force. This means that there are no obstacles to the free movement of returnees/pension beneficiaries and to their returning to their pre-war homes of the kind that would jeopardize their social security rights. (However, there is a difference in the amount received by the beneficiaries, between RS and FBH. The pensions in the RS are notably lower.)

Coordination and cooperation among Pensions and Disability Insurance Institutes on the regional level operates well – through bilateral agreements between the states. This is mainly the case with the neighboring countries Croatia and Serbia and Montenegro, as well as with other countries of former Yugoslavia. Pensioners who used to work and acquired their rights to pension in any of former Yugoslav republics receive their pensions on regular basis.

The main obstacle to the free movement of domestic workers within BH is the economic situation and the difficulties they are facing when looking for a job. The Labor Law and the RS Employment Law prohibit all forms of discrimination and guarantee equal rights in employment. This means that a worker from one Entity can exercise his or her rights to health insurance, pension and disability insurance, unemployment rights and all other employment – related rights in the other Entity.

In Brcko District there are no obstacles to free movement of domestic workers. As a general condition, all that is needed to apply for a job in the District institutions is BH citizenship. A significant number of employees in the District institutions are from other parts of BH. The same is true of the private sector, where workers from all over BH are employed.

The adoption of unified pensions and disability insurance legislation at the BH state level, to which end the relevant steps are already being taken will eliminate the current problems in

²³ Official Gazette of RS 27/93, 14/94 and 10/95

this domain. RS has pulled out of the Agreement on mutual rights and obligations relating to pensions and disability insurance, so that relations between the two funds are currently unregulated as regards beneficiary rights.

There are also difficulties relating to the obsolete structure of the pensions and disability insurance funds, which require structural changes to the entire system both of pensions and health insurance.

Recognition of professional and occupational qualifications is secured on the whole territory of BH, and the validity of legally issued diplomas/certificates has not been disputed whatsoever.

The Law on employment brokerage and unemployment benefits²⁴, stipulates that no one may be placed in a position of inequality on the grounds of race, skin color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, membership or non-membership of a political party, membership or non-membership of a labor union, or physical or mental handicap.

The RS Labor Law and the Employment Law prohibit all forms of discrimination, including discrimination on ethnic or national grounds, when seeking employment in RS, whoever the employer may be or whatever the nature of ownership or form of organization.

It is possible that within certain operations and services at the BH state level there are professional activities the performance of which depends on national affiliation or place of residence. The reason for this is the desire to have equal national and territorial representation in the institutions on the state-level.

As regards the public sector, Article 13 Paragraph 2 of the Statute of Brcko District guarantees equal rights at work for all residents in the District, and Article 4 of the Labor Law of Brcko District²⁵ prohibits all forms of discrimination in employment, both in the public and private sector. As a result, and consistent with current norms, there can be no professions the exercise of which is dependent on nationality or residency requirements.

Against this, the authorities and civil service of BH require the adequate representation of the constituent nations of BH consistent with the national population structure ascertained by the latest population census (1991).

The Law also stipulates that employers with job vacancies and persons looking for work may seek assistance from employment bureaus in recruiting suitable employees or finding jobs. Employment bureaus are required to collaborate, coordinate their operations and exchange information on which official records are kept. In addition, the employment bureaus organize the collection, exchange and dissemination of information on job seekers and other information required to carry out their basic functions.

The unemployed persons apply for the unemployment benefits to which they are entitled at the employment bureau relevant to their place of residence. The unemployed who have

²⁴ Official Gazette of FBH no. 41/01

²⁵ Official Gazette of Brcko District BiH no. 7/00

changed their place of residence as a result of the war apply at the employment bureau for the place where they are currently living.

In the light of this, there are no professions in BH in relation to which the regulations applicable to the FBH impose any limitations on freedom of movement of workers. It is not known whether there are any professions to which limitations on freedom of movement of workers apply in RS. The only limiting factor is the economic situation in the country. Also, none of the current regulations of Brcko District provides for any such restrictions. Formally speaking, not even the professional of military officer is so regulated as to limit freedom of movement of such persons (which has proved through the recent establishment of the Ministry of Defense of BH).

With regards to employment of EU workers legally residing in BH, the Law on Employment of Foreign Nationals of FBH²⁶ sets out the terms and conditions for employing foreign nationals and stateless persons, the jurisdiction of the Federal Employment Bureau and the cantonal employment bureaus in the process of employing foreign nationals, and other issues relating to the employment of foreign nationals. The law stipulates that a foreign national may enter into a job contract or contract to perform temporary or casual work, based on a work permit, if he or she fulfils the conditions set out in the law and the employer's own memorandum and articles, standing rules etc. Work permits are issued to foreign nationals on conditions that they have a permanent or temporary resident's permit for FBH and that the employment bureau has no record of any unemployed person meeting the requirements of the employer for a given job contract to perform temporary or casual work.

Work permits are issued for a specific period of no more than one year. Exceptionally, a foreign national who has a permanent resident's permit for FBH may be issued with a work permit valid for an indefinite period.

Foreign nationals with tourist visas may not be issued with a work visa.

It can not therefore be said that BH is able fully to ensure the non-discrimination of EU workers legally residing in BH by comparison with BH nationals as regards access on equal terms to all jobs.

Under the terms of the Labor Law, the Law on Employment and Decree on special conditions for the employment of foreign nationals and stateless persons, EU workers who are legally resident in BH-RS pursuant to the BH Law on Immigration and Asylum may be employed by any employer in RS, which therefore ensures that such persons are not subject to discrimination.

Under the terms of the Decree on special conditions for the employment of foreign nationals and stateless persons²⁷, foreign nationals and stateless persons may enter into employment with domestic or foreign legal or natural persons who are engaged in commercial activities in RS if they meet the general and specific conditions for entering into such employment prescribed by the Law on Employment.

²⁶ Official Gazette of FBH no. 8/99

²⁷ Official Gazette of RS no. 15/97

Under the terms of this Law, special conditions are taken to mean that the foreign national has:

- A permit from the relevant RS authority for temporary or permanent residence;
- A work permit from the Ministry of Labor.

Brcko District has adopted its own Law on Employment of Foreign Nationals to regulate this issue, which entered into force on 6 December 2002²⁸. The Law permits foreign nationals to be employed provided that they are legally resident in the District. The Law does, however, give precedence to domestic workers in obtaining jobs.

With the aim of facilitating foreign investments and the unimpeded movement of goods and capital, however, the draft Income Tax Law of Brcko District provides for foreign nationals who earn income in the District to pay tax in their own countries, subject to certain conditions.

Current and prospective assessment:

BH already recognizing the principle of non-discrimination between nationals and foreigners legally residing in the country. Therefore the application of equal treatment to those EU workers already legally residing in BH should not be a problem.

Professional structures (such as professional chambers or associations) are in place for many professions, but these will probably need to be reinforced in the future. Integration with EU professional associations is developing well.

Due to specific situation in BH, which is still recovering from the consequences of the war, it is difficult to expect that free movement of workers from the EU MS is going to be accepted easily among BH nationals, where official unemployment rate is 40%! On the other hand it is difficult to believe that labor market of BH is going to be extremely attractive for workers from the EU, especially due to low salaries that workers earn here. However it is necessary to provide adequate legal framework for realization of such freedom, especially with the hope that BH is eventually going to become attractive destination not only for FDI, but also for the workers from the EU.

Instead of conclusion:

All the necessary legislation and structures in this area do not seem to be in place. The authorities of BH do not seem to be fully aware of the importance of this issue for the full functioning of the single economic space. From the technical point of view, adaptations of regulations will be necessary in the near future.

Examples of discriminatory measures:

- RS treats FBH almost like a foreign country (Article 24 Labor Law of RS),

²⁸ Official Gazette of Brcko District no 17/02

- Existing legislation is discriminatory for foreign workers, because they need to have work permits from several institutions, like e.g. authority for temporary or permanent residence, relevant ministry of labor, university certificate on recognition of diploma etc. and a foreign worker is not provided with “one stop shop” approach. Instead, he/she is supposed to wonder around from one institution to another, on different levels (municipalities, cantonal, federal, RS, state level institution). Such situation is not going to be acceptable especially when BH signs SAA.
- Discrimination is contained in the very fact that there is no labor legislation on the state level, social protection is not provided equally for all citizens.

3. Freedom to provide services and right of establishment

Freedom of establishment includes the right to take up and pursue activities as self-employed persons and to set up and manage companies in Member States without any restrictions. Freedom of services comprises right of legal and natural persons to enter into territory of other Member State in order to provide or receive services under the same conditions as nationals without any restrictions or prohibition deriving from the national legislation or administrative practice.

Generally, BH applies a non-discriminatory regime on establishment. The European Union companies may establish themselves and operate on the basis of national treatment.

In the services area BH has also a relatively non-discriminatory approach that is proved through the extent of foreign banking within the county and the presence of foreign companies in the transport and courier services sector. The service area, however, is still complicated by an economy divided in some sectors.

FINANCIAL SERVICES

Banking sector

The banking sector is regulated by Entities' bank laws, which are to a large extent mutually harmonized, and Entities' laws on banks (the Law on Banks of FBH and the Law on Banks of RS) regulate the establishment, business operation, governance, supervision and termination of legal persons engaged in the business of receiving money deposits and extending credits as well as other financial operations. Both laws provide that national and foreign natural and legal persons may found a bank. A branch of a foreign bank must obtain an authorization. The Banking Agencies in FBH and RS, as the supervisory bodies for banks, issue banking licenses, supervise banking operations, revoking bank operation licenses, manage and supervise bank rehabilitation and liquidation process, issue rules based on law to regulate bank operations. The Central Bank of BH is responsible for coordinating operations of FBH and RS banking agencies. The Banking Agencies are autonomous, independent, non-profit institutions, authorized and charged by the Law with the operations of regulation and supervision of banks. The Agencies cooperate with the Central Bank of BH including obligation of submitting monthly reports on its activities and on activities of financial institutions within the area of their responsibility.

The State Law on the Insurance of Bank Deposits adopted in 2002 regulates establishment, status, activities and management of a state Deposit Insurance Agency that insures protection of deposits in banks (up to 5000 KM) approved by Entities Banking Agencies. Pursuant to the Law all banks in BH must ensure they have a banking license and membership of a deposit insurance programme. In order to gain such membership, banks must meet financial criteria stipulated by laws on banks and be at least 90% privately owned.

All domestic payments transactions in BH are conducted through commercial banks and the Central Bank of BH as settlement agent, as stipulated by the Law on Internal

Payments Transactions, the Law on Payments Transactions and the Law on the Prevention of Money Laundering, which are Entity level laws. Foreign transactions are also conducted through commercial banks, and are regulated by the Law on Foreign Currency Dealings. There are constraints on transactions for natural persons and non-residents, regulated at the Entity level by the Standing Rules on the conditions and procedures for outward foreign currency transactions, securities and fixed-interest securities made out to foreign payment funds and the Standing Rules on the terms on which foreign persons may open accounts, receive payments due in local currency, and deposit and withdraw foreign currency. There are no limits for legal persons, but in the case of foreign transactions they must have the necessary documentation as prescribed by the Law on Foreign Currency Dealings, also at the Entity level.

Securities

The main legislation governing capital markets of BH consists of Entities' Laws on securities Commission, the Law on Securities and the Law on Register of Securities. The FBH and RS Securities Commissions issue licenses to privatized investment funds and privatized fund management companies as well as licenses for stock exchange operations. Ownership transfer of securities traded on the stock exchange is effected by the Securities register. In accordance with the Law on the Securities Commission, the Securities Commissions are answerable to the Entity parliaments, to which they are required to submit an annual report and annual accounts for the previous trading year.

Insurance

The BH Law on Insurance Agency²⁹ regulates insurance sector in BH to ensure necessary coordination of insurance laws in Entities and BH; insurance businesses; establishment, composition, status, scope of operations and management. The State Agency ensures uniform application of insurance law in Entities; harmonization of legislation in force in order to secure equal relation to all insurance company in BH and equal legal protection for insurance contractor and the third party claiming compensation in BH; harmonization of national legislation with relevant EU legislation, settlement of disagreements arising between existing regulatory agencies; supervising the Green Card Bureau and representing BH in international insurance organizations. The Law directly eliminates duplicate licenses and approvals.

The next step is adopting uniform insurance laws in Entities which will create identical conditions for work and supervision over insurance sector.

Telecommunications

The legal framework for telecommunications is set by the Communications Law of September 2003. The telecommunications sector in BH is additionally governed by the

²⁹ Official Gazette of BH, no. 12/04

Communications Regulatory Agency (hereafter CRA). The legislative provisions governing all the essential aspects of telecommunications and the regulatory framework are in compliance with European standards and directives.

The Law on communications defines obligations and responsibilities of the CRA that is a relevant body for regulation of broadcasters and public telecommunications networks and services including issuing licenses, price determination, interconnection and defining basic conditions for provision of common and international communications assets.

Pursuant to the Telecommunications Law of BH and the Entity laws there are no restrictions on foreign investment in and ownership as regards the privatization of telecommunications sector. Foreign and domestic capital receives equal treatment. The law regulates that pricing and invoicing fall under the jurisdiction of the Entity governments, and the entire procedure has to be approved by the CRA.

Telecommunications policy in BH stipulates that international telecommunications services must be liberalized by 1 June 2006 at latest.

It is important to note that the Council of ministries has adopted a decision on telecommunications policy in BH underlining the need for market liberalization and competitive service provision in the telecommunications sector. The CRA has also made the issuing of licenses to operators conditional upon their offering their services country-wide within three years. As a result the process of liberalization and competition has begun.

The Ministry of Transport and Communications was established at State level in 2003. At the Entity level the relevant ministries have jurisdiction over telecommunications sector (FBH Ministry of Transport and Communications and RS Ministry of Transport and Communications)

There are three Entity-based telecom service providers (Telecom RS, Telecom BH and HPT Mostar) which have de facto monopolies of fixed network operations on their own territory. Although pricing remains under Entity government control, there are no formal restrictions on foreign investment or ownership.

E-business still plays a minimal role. There is a need for a common signature law to facilitate such business.

ESTABLISHMENT

Under a SAA BH would be required to grant EU companies the right of establishment. This right would be reciprocal. EU companies established in BH should be granted either national treatment or MFN treatment, whichever is more favorable. Notwithstanding the provisions governing the free movement of workers under the agreement, special establishment provisions could be introduced for “key personnel”.

The main legislation regulating right of establishment is Entities’ Companies laws and newly adopted State Framework Company Registration Law. In accordance with the FBH Companies Law³⁰ and the RS Companies Law³¹ organizational forms of companies in

³⁰ Official Gazette of FBH 23/99, 45/00, 36/02

³¹ Official Gazette of RS 24/98

both Entities are general partnership, limited partnership, limited liability company and joint stock company. The founders of companies may be domestic and foreign natural and legal persons. In Republika Srpska the Law stipulates that foreign persons may establish companies on condition of reciprocity. Companies registered in one Entity are legally permitted to operate in both Entities.

The registration of companies is regulated by the newly adopted State Framework Business Registration Law (August 2004), which provides fast, uniform and simplified registration procedure. The Law is significantly harmonized with EU legislation. It determines a central company registration system for entire BH.

Before starting business all companies, defined as such by this law, are obliged to register with the competent register court. The registration procedure is prescribed by the State law and Entities and Brcko District's laws; a method of registration will be uniformly determined by the latter. The Register of data, kept by competent register courts in Entities and Brcko District, consists of the Main Book and Register of Documents in print and electronic form.

The following public data which enter into the Main Book are: company name and address, names of all company founders; date of application; form of company; name, number and date of the act on establishment, first and family name of the authorized representative, amount of the agreed (entered) registered capital; amount of registered capital that was paid in, value of capital in items and rights, percentage of contribution in capital of an individual founder, scope of operations and business identification number (Article 10). Necessary registration documents will be uniformly determined by Entities and Brcko District laws. If special permissions are required as a condition for registration, they will be also included in registration documents.

Information on the submitted registration application will be sent to tax and customs authorities in order to obtain a tax number and a custom number. A register court issues a decision on registration within five days, which is valid on the entire territory of BH. The decision contains details prescribed in Article 10, a business identification number, a tax number and a customs number if exists. Registration court informs on the registration decision the following authorities: tax authority, municipality, statistical office, pension and disability insurance authority, competent customs office and competent regulatory bodies.

The implementation of the Law will start in 180 days from the date of entering into force at latest. The same deadline is prescribed for establishing of Register data and organization of competent register courts as well as for taking over data of existing companies from the competent register bodies. Entities and Brcko District will pass their own legislation on company registration in 60 days from the date of entering into force of this Law. They will also harmonize legislation, which is not in compliance with this Law, in 30 days from the date of its application.

The Entity's Ministries of Justice and the Judicial Commission of Brcko District will ensure proper technical functioning, maintenance, delivery of electronic data from the Main book as well as for functioning of the system.

To sum up, the State law represents a legal framework for ensuring business activities, both national and foreign companies, on the entire territory of BH; prescribes obligations for Entities and Brcko District authorities to pass new legislation on business registration, and

harmonize existing legislation that is not in accordance with this law. The State law also prescribes institutional framework consisting of Entity's Ministries of Justice, The Judicial Commission of Brcko District and register courts.

IV.4. FREE MOVEMENT OF CAPITAL

BH has regulated the issue of free movement of capital and foreign investments by many pieces of legislation at the state and entity levels. However, it was not before few years ago that the real scope of all the difficulties and the complexity of the task that should be solved within the ongoing reform emerged in practice. We believe that this particular area is over-regulated so much that even the most experienced lawyers find it difficult to deal with the network of numerous regulations. This is why it is normal that a potential foreign investor, who wants to quick start a business and see a profitable return on investment, finds it even more difficult and oftentimes quits the idea of investing in BH.

The most important law in this field in the *Law on Foreign Direct Investment Policy in Bosnia and Herzegovina*³² which is, in fact, the framework law and as such serves as a basis for drafting many laws and implementing regulations at lower levels. This Law was enacted with the aim to define a clear, transparent, foreseeable and stable policy and is also a legal framework for securing rights, benefits and protecting foreign investors' interests.

The *Law on Foreign Direct Investment Policy in Bosnia and Herzegovina* testifies to the fact that BH entered a new era of peace and stability and adopted a new open, free, market-orientated economic policy. BH is thus resolved to promote, enable and protect private investments. (BH is a member of the *Multilateral Investment Guarantee Agency* and is a party to the *Convention on the Settlement of Investment Disputes Between States and Nationals of Other States*).

According to the provisions of the above-mentioned Law, a foreign investor may invest and re-invest his or her profit as a result of such investment in any or all sectors of economy of BH. BH committed itself in paragraph 2 of Article 8 of this Law to refraining from discriminating against foreign investors on any ground, including but not limited to their nationality, seat or residence, religion or the state of origin of investment.

For that reason foreign investments are relieved by Article 10 of the Law from paying customs fees and duties, while investors may open accounts in any bank (Article 11).

Restrictions do exist, though: they are defined in Article 4 of this Law and refer to the industries involved in production and sale of weapons, where a foreign investment is restricted to 49% of the overall capital. There is also the requirement that a foreign investor must get a prior approval from the responsible authority in the entity concerned.

This is precisely the cause of the major problems for, in order for any foreign investor to open an enterprise, a bank or an office in BH, he or she must get an approval from the responsible entity-level ministry. He or she may register the firm at the responsible court only after the approval has been issued by the responsible Ministry.

³² Official Gazette of BH, No. 4/98

True, the legally set deadline for issuance of approval is not a very long one and is 30 days from the day of submission of the request and for the court only 10 days from the date of receipt of the request. However, these deadlines are not complied with in practice; foreign investors most often state the waste of time due to non-compliance with the deadlines as the major reason for their quitting the business in BH.

In order for a foreign investor to register a firm (an enterprise, a bank etc.) within the Federation of BH, the investor has to address the Ministry seated in Mostar. The request must be submitted in person and a certain amount of tax has to be paid. The work permit for a foreign investor also has to be taken in person. This clearly means that time is wasted and makes the business more expensive right in the beginning even if the foreign investor hires a lawyer.

From the aspect of the freedom of movement, the most interesting provision is the one contained in Article 12 of the *Law on Foreign Direct Investment Policy in Bosnia and Herzegovina*. It stipulates that «a foreign investor shall enjoy the same right of ownership over the real estate as the citizens of BH».

This provision is in harmony with the provision of Article 88 of the *Ownership Act*³³ which regulates that foreign individuals and legal entities carrying out a business in the Federation may own the business facilities, business premises, apartments and residential buildings and the construction sites on which these buildings have been or will be constructed. (an equivalent provision exists in a similar Act in force in the Republika Srpska).

The next Article (Article 89) defines that a foreign individual may own an apartment and a residential building and the construction site on which such buildings have been or will be constructed only if the individual concerned has a permanent residence in the Federation of Bosnia and Herzegovina (or the Republika Srpska).

As the basic rule (Article 87) is that a foreign individual or a foreign legal entity may own the sites and buildings only if they inherited such sites or buildings, it arises that foreign physical and legal persons may be the owners of the real estate ONLY if they carry out a business (approved by the responsible authorities) or if they have a permanent residence in BH.

These legal stipulations (which have remained unchanged for the past seven years) obviously set a restriction to the free movement of capital. The question is also - if there is reciprocity between the states - whether these provisions are in compliance with the European Convention on Human Rights which is a part of the Constitution of BH.

³³ Official Gazette of the Federation of BH, No. 6/98

However, there have been no disputes over these issues before the domestic courts or the BH Constitutional Court or the Human Rights Chamber. This is the reason why there has been no opportunity for the local courts to develop a case law which would lead to the amending of these provisions or at least to the lessening of their rigidity.

It should be stressed, however, that a foreign investor, either a physical or a legal entity, has to seek approval from the entity-level Ministry of Justice, even if he or she meets all the requirements from the law – that he or she runs a business in BH or has permanent residence here. Only thereafter can he or she register the ownership in the land register.

This means that in addition to the approval (for running a business) obtained from the responsible Ministry, a foreign investor has to seek the approval from the Justice Ministry in an administrative procedure for acquiring the right of ownership over the real estate.

It is interesting that this limiting factor also applies to the agencies and institutions of the international community. Article 92 of the Law stipulates that foreign states may not be entitled to the right of ownership over the real estate in any case for the needs of their diplomatic and consular offices, their organizations and specialized agencies and the organizations and specialized agencies of the United Nations and the European Union. Instead, they may only use the real estate on the basis of a lease contract conveying the real estate to them for the minimum of 5 and the maximum of 50 years. Moreover, the lease has to be approved by the Justice Ministry, while the Justice Ministry may issue such an approval (for lease) only on the basis of the prior approval by the Foreign Ministry of BH.

It may be expected that these clearly restrictive provisions regarding ownership over real estate will be overcome in the new Ownership Act, which is in the process of being drafted. An expert team chaired by the German GTZ organization will most likely adapt these provisions to the EU standards.

It is interesting that the previous Ownership Act (enacted in 1994 in the Republic of Bosnia and Herzegovina) was less restrictive toward the legal status of the foreign persons (individuals and legal entities). Restrictive were only the elements of reciprocity, which is the standard applied in almost all European countries.

The status of foreign persons in the privatization process in BH is not discriminatory. On the other hand, some elements of discrimination have been noticed in terms of ownership. The *Law on Privatization of Companies*³⁴ and the Law on Privatization of Companies and Banks in BH³⁵ stipulate that all domestic and foreign physical and legal persons may take part in the process of privatization of companies, banks or the properties of companies and banks. In this way foreign investors are equalized with the citizens of BH. Moreover, the provision of Article, paragraph 1, sub-paragraph 3 of the *Framework Law on Privatization*

³⁴ Official Gazette of the Federation of BH, No. 27/97 and subsequent amendments

³⁵ Official Gazette of BH, No. 14/98 and the relevant amendments

of Enterprises and Banks in Bosnia and Herzegovina regulates that all entity-level laws and regulations must be based on non-discrimination and that foreign physical and legal entities may purchase shares and properties in the privatization process.

We have considered a free movement of capital through the prism of applicable legislation which regulates, at the level of BH, foreign investments, the right to real estate and participation in privatization. It may be noticed that in formal legal terms there are no restriction to the movement of capital since the framework laws call upon non-discrimination or the equalization of the status of domestic and foreign physical and legal persons.

But the strength of this principle is weaker at the lower levels of authority and the law in the entities. It may be proved that the norms governing the freedom of movement of capital is even worse if we take into account numerous implementing regulations which are often different in different administrative units.

But we should be optimistic because our citizens are becoming ever more aware of the fact that there will be no prosperity in our country without foreign investments and joining Europe and that we should not be turning to one another but to Europe whose investments, without any doubt, have their clear and tangible goal, which is the profit. But no one should fear that profit; rather, one should identify his or her interest in it.

We have already said that the regulations governing ownership i.e. the right of ownership over real estate is underway and some procedural laws have been adopted – the Law on Administrative Procedure and the Law on Enforcement Procedure which will certainly result in an efficient judicial procedure and the implementation of the rights of creditors. The new procedural laws have regulated one major issue: it is for the first time that the creditor, and not the debtor, is protected in terms of his or her claims. If we add to this the Law on Mortgages and the Law on Notaryship which was adopted long ago but which is soon to be implemented, we may say that there is reason for optimism in the near future.

5. CUSTOMS

Starting from the basic notion that customs are defined as consumer tax with an element of foreign business, and taking into consideration the integrative trends from the European Union Acquis Chapter 25 (Customs Union), candidate countries have for a quite a long been preparing their respective customs systems within the stabilisation and association process, availing of the Blueprint guidelines. The advisory quality of the guidelines was particularly useful for BH. The EU customs policy is single and binding for all its members. It is governed by 1992 regulation, prescribed by the European Commission and each new member is bound to adopt the relevant set of legislation.

In the area of customs-related legislation, a good progress has been achieved over the past years. BH customs tariff was mainly harmonised with the EU Customs Code (92/2913/EC) in respect to classification (a combined CN nomenclature was fully applied). Certainly, customs tariff levels still considerably differ, and this would be among main commitments within the negotiation and accession process in view of obligation of EU customs code full assumption by new members.

BH customs administration currently undergoes most serious reforms since the war, aimed at improvement of collection of customs revenues and development of a customs system compatible with the EU customs. Two Entity Customs Administrations are currently in the process of integration into a single administrative system within the Indirect Administration Taxation. The customs administration reform also presumes different regional structuring and reduction of customs offices throughout BH.

The BH customs system reform has been supported by the CAFAO – permanent office EC-financed since 1997, World Bank – Support to Trade in JIE Project (TTFSE): Development of Customs Border Crossings, and EC – Border Crossings Development Project.

Main institutions in the customs sector in BH are the Indirect Taxation Administration Managing Board, as separate authority, Ministry of Foreign Trade and Economic Relations, responsible for foreign trade and customs tariff, and Ministry of Finance and Treasury of BH, Ministry of Finance of Federation of BH (FBH), and Ministry of Finance of Republika Srpska (RS). Relations between these institutions are defined by the Constitution of BH, while competences, responsibilities, coordination and subordination are governed by relevant laws (Law on Council of Ministers, Ministries and other BH Institutions, Law on Indirect Taxation, Law on Customs Policy, and Law on Customs Tariff).

The general estimation is that the current number of customs offices in BH is too high (majority of municipalities have their customs offices), as are the staff levels. The customs administration reform will take time, as it is one of key challenges in the area of customs. The reform must result in furtherance of customs administration operations, through formation of a single customs administration, including further service professional upgrading, improved customs procedures quality, equipping and development of modern customs points, better internal control and investigation service, IT system introduction, consistent regulations application.

Future single customs administration in BH must be trained to cooperate at operation level with EU customs services, to conduct investigations and controls up to EU standards as to reliable security of internal and external borders. The use of a single administrative document (SAD) should be introduced in order to facilitate customs and transport procedures.

Customs regulations consist of the Law on Customs Policy³⁶ and laws and regulations in the adoption procedure at the BH Parliament, Council of Ministers of BH and Entities. Customs authorities report to Entity Governments. The Law on Customs Policy, that is currently in the first reading procedure in BH Parliament, regulates the matter in a completely new manner. It regulates core system elements for customs protection of BH economy, rights and obligations of all business entities in customs procedures, then customs area, customs line, customs border area, customs surveillance, customs procedure, storing of customs goods, temporary goods import, export and transport, duty free shops operation, external procession procedures, customs preferences, customs debt guarantees, regulations on preferential and non-preferential origin of goods, In addition to a series of other provisions. Discriminatory measures are not in place.

Customs area is single, customs rates are identical in both Entities, and customs revenues are Entity-owned revenues. Charges are paid by rates prescribed by the Customs Tariff Law.

As a part of reforms, the BH Parliament currently has in its first reading procedure the Customs Policy Law, which regulates the matter in a substantially new way.

Discriminatory measure of BH national legislation: discrimination measures are not present. Certain objections by public and importers were brought to the attention of the Council of Ministers, because of decision on exemption from customs of SKD/CKD elements for assembling of vehicles for free sale³⁷. This preference, although general, was used primarily by the joint venture comprised of “UNIS” enterprise and German concern “Wolkswagen Audi Gruppe”. The mentioned decision resulted in lesser duties for “Skoda” and “Wolkswagen” cars, which assembling is done in BH, in relation to all other types of cars imported to BH. This, temporary, measure was introduced in 2000. Also, very contestable are the objections from economists on discriminatory feature of the measure and prospective preference to be granted to the WAG concern, as the decision in question enables other producers to be granted duty exemption benefits, under condition of certain investment.

Conclusion: as a part of accession process, the EU candidate countries prepare their customs systems, in order to become immanent to this single Customs Policy of EU, which is unique and obligatory for all members and governed by regulations from 1992.

In the area of customs-related legislation, a good progress has been achieved over the past years. BH customs tariff was mainly harmonised with the EU Customs Code (92/2913/EEC) in respect to classification, and BH Customs Administration currently undergoes most serious reforms since the war, aimed at improvement of collection of customs revenues and development of a customs system compatible with the EU customs; two Entity Customs Administrations are currently in the process of integration into a single administrative system within the Indirect Administration Taxation. The customs

³⁶ Official Gazette of BH, 21/98 and 34/2000

³⁷ Official Gazette of BH, 12/2004

administration reform, expected to take some time, also presumes different regional structuring and reduction of customs offices throughout BH, and it includes further service professional up-grading, improved customs procedures quality, equipping and development of modern customs points, better internal control and investigation service, IT system introduction, consistent regulations application.

Future single customs administration in BH must be trained to cooperate at operation level with EU customs services, to conduct investigations and controls up to EU standards as to reliable security of internal and external borders. The use of a single administrative document (SAD) should be introduced in order to facilitate customs and transport procedures.

Customs regulations consist of the Law on Customs Policy³⁸ and laws and regulations in the adoption procedure at the BH Parliament, Council of Ministers of BH and Entities, and as a part of reforms, the BH Parliament currently has in its first reading procedure the Customs Policy Law, which regulates the matter in a substantially new way. Discriminatory measures are not present.

In the area of customs, reform course should be continued with simultaneous SBS strengthening.

6. TAXATION

One of the main tasks of the European Community Treaty (ECT) is to make business making by enterprises freed from legislative, fiscal and technical obstacles or constraints. The policy of harmonisation with EU legislation, including taxation laws (Directive VI) started with reshaping of general sales tax; direct taxation harmonisation is less important, while corporate tax is yet to be decided upon in terms of unique shaping, and no guidelines were proposed for establishment of a joint corporate tax system.

Simultaneously, fiscal decentralisation in BH is very complex (State, Entities and Brcko District, cantons and municipalities), and in general there are three specific groups of issues:

- (a) fiscal sovereignty;
- (b) revenue distribution;
- (c) administration competences distribution.

Fiscal competences are distributed among state of B-H, its Entities and Brcko District. Fiscal revenues (financial sovereignty) for tax belong to Entities and Brcko District, while revenues used to cover public expenditure for the State are arranged as a contribution as determined by BH Parliament, including expenditures for foreign debt servicing and BH institutions funding.

³⁸ Official Gazette of BH, 21/98 and 34/2000

In order to mitigate negative implications to the single economic space of BH, indirect tax (excises, sales tax and tax on services) harmonisation was carried out in BH with the support of the international community in end 2002, while direct tax rates remained different, so tax on profit is 30% in FBH, 20% in RS and 10% in Brcko District. Different tax rates are also applied on tax on income of citizens.

The taxation structure in BH is predominated by tax on consumption (51%), i.e. indirect tax; only about 22% of overall public revenues account for direct tax and 28% for contributions, which implies that BH has consumer type of taxation system in general. Taxation of spending speaks of insufficiency of domestic accumulation needed to intensification of changes to the BH economic structure, i.e. incentives to savings. Practically, three taxation systems are operational in BH, which is a situation of a series impediment to operations of the single economic space in BH, and it encourages taxation corruption etc. Starting from such presumptions, it comes necessary to set criteria for future building of the system for a modern taxation system, projected in basic fiscal policy aims at taxation function. Necessity of taxation system up-grading has never been contended, and the core substantial improvement was achieved by VAT introduction.

The introduction of VAT, as one of the most important reforms in economic-financial system of BH is reflected in the following:

- Securing of legal freedom of movement to economic factors and creation of single economic space of BH;
- Creation of conditions for rational introduction of foreign trade and customs policy;
- VAT usage, as an instrument for catching macroeconomic stability at a single market commentary to the UE single market;
- Creation of conditions for effective funding of BH Institutions and making for international obligations of the State, reduction of corruption etc.

The projected taxation system of BH has to be, as much as possible, allocation-neutral, it should ensure stable and optimal amount of public resources for funding of public offer, ensure certainty to tax payers in respect to payment of their obligations, reduce and distribute tax burden in right way, be simple, understandable to tax payers and cost-efficient in application, flexible, i.e. evenly reacting to changeable economic conditions.

In this way, BH tax structure will be approximated to that of the EU countries, and would create fiscally competitive taxation system compared with other transition countries, as well as an incentive to foreign investment. Unilateral measures should be changed from within BH, as measures for avoidance of double taxation, while in relation with other countries it should be in form of bilateral measures, more specifically, double taxation avoidance treaties.

The BH taxation system reform is supported by IMF, World Bank, OHR, CAFAO, US Treasury, SEED and others. Ongoing discussions on tariff levels to be applied to VAT in

BH - perhaps too underlined in media, irregardless to their outcome - are welcome, even in their educative function (for information of VAT of business community and public in general).

The BH tax sector main institutions are Indirect Tax Administration Steering Board, as a separate authority, Ministry of Finance and Treasury of BH, Federal Ministry of Finance and RS Ministry of Finance.

7. PUBLIC PROCUREMENT

The public procurement area is explained in a special chapter of White Paper, and it is based on open market principles for all procurement for public authorities and legal entities in the water, power, transport, and telecommunications sectors. The open market principles are followed through public procurement transparency, and they are a consequence of procurement competition and equal opportunities for all companies to win public bids. The result is improved effectiveness in public spending, underlying a request for single market and a full and effective competition in public spending.

The contract awarding rules are defined by directives, which provide for transparency. Rules on contract awarding are defined under the same directives, which regulate transparency, advertising procedures, including selection procedures, competition rules, and selection criteria and bidders legal protection.

EU support measures are consisted in the following Projects:

- Public procurement staff training;
- Presentation and terminology standardisation;
- IT systems development;
- Consultancy firms development.

Directives 93/36/EEC, 93/97/EEC and 92/50/EEC cover procurement for State institutions, while Directive 93/38/EEC concerns procurement by legal entities in public activities; and bidders protection, based on transparency and non-discrimination, was defined under Directive No. 89/665/EEC for state agencies procurement and Directive No. 92/13/EEC for procurement by legal entities in public activities.

With an ultimate goal to contribute to creation of single economic space in BH, the aim of the Public Procurement Law reform will be to attain legislative harmonisation through BH territory.

The prepared single roof Law on Public Procurement for BH, in line with the goal of setting the grounds for single economic space as a preparation for future EU membership, in accordance with the BH Constitution, Article 1.4.4 – Movement of Goods, Services, Capital and People, is at present in the Parliamentarian procedure.

The Ministry of Finance and Treasury of BH is responsible for this Law, which will be adopted by the Parliamentarian Assembly of BH as a single law and enforced throughout the country. BH institutions are directly responsible for the foreign trade policy, while Entities should fully respect the Constitution, invalidating Entity Laws provisions inconsistent with the Constitution or BH Institutions decision. The general principles of the international law are incorporated and made integral part of the BH and Entity legislation.

BH makes an effort to accept the Stabilisation and Accession Agreement, in cooperation with the EU, and in addition to signing the Agreement with WTO on government procurement. Competition, consumers protection, standardisation, environmental protection and public procurement are but some among key issues needed to be addressed in creation of a single economic space in BH, which is of strategic importance for development of market economy. The Peace Implementation Council (PIC) confirmed the need for introduction of a single economic space within Brussels Declaration, in May 2000, with public procurement reform as a condition. The most suitable model possible to implement the future Law on Public Procurement in BH, was harmonised with BH Constitution, existing legislation (e.g. administrative procedure, fiscal policy etc.), and was made acceptable for the EU and other international organisations which BH is to approach for membership.

The EU Public Procurement Directives provide for a clear definition of agencies covered by EU public procurement rules. The same is the definition of BH bodies making contracts on public procurement, and those are: BH institutions, Entities (Federation of BH and RS) Brčko District, cantonal, city and, municipal authorities, as well as their groups and bodies subject to public control. It should be remained that the Public Procurement Draft Law includes a reasonable and useful proposal to include public sector bodies in concluding contracts on public procurement and apply procedures under the Law concerned.

With the Adoption of the Public Procurement Law at BH level, State-level public procurement regulations became invalid (Public Procurement Decision), Entity regulations (in RS: Public Procurement Law; and in FBH: Public Procurement Enactment) and District Brčko (Law on Public Procurement).

Public procurement regulation at the State level is achieved by:

- Creation of single economic space in the public procurement area;
- Saving on public procurement funds;
- Reduction of fraud and corruption opportunities;
- Unique public procurement procedures at BH level, convergent with the EU public procurement procedures.

8. Intellectual Property Rights

Short overview

One of the requirements of the Feasibility Study is full implementation of Industrial Property Law of Bosnia and Herzegovina, including relevant institutional building. The main objective in this period is transformation of the Institute for Standards, Metrology and Intellectual Property of Bosnia and Herzegovina into three independent institutes. One of these institutes will be the Institute for Intellectual Property of Bosnia and Herzegovina. This process of separation of the Institutes is currently underway – the laws that will enable this are adopted and now and now these laws are supposed to be implemented.

“Intellectual property rights” gave the right to prevent others from using inventions, designs or other creations of creators of high technology products, invention, innovation, research, design. Around the world intellectual property became more important in trade and international economic relations. Common international rules establish minimum levels of protection that each government has to give to the intellectual property in accordance to the TRIPS Agreement by WTO members. The purpose of TRIPS Agreement is to ensure that adequate standards of protection exist in all member countries.

BH is not yet member of the World Trade Organization, but it is going to accomplish fulfilment of conditions for accession in the very near future.

European Communities and their member states have ratified TRIPS Agreement and completed necessary changes in *Acquis Communautaire*.

Stabilisation and Association Agreement, as it is obvious from the Croatian and Macedonian agreements emphasise protection of Intellectual property rights which are , based on the SAA, belonging to the primary areas for harmonisation. Neighbouring country Croatia in terms of 3 years after coming into force of Stabilization and Association Agreement have to provide similar protection of Intellectual property rights as it is the case in European Union. This example points out that BH will have to take similar steps in the near future in terms of fulfilling the conditions from the future Stabilization and Association Agreement.

In order to meet its targets of accession to the World Trade Organization (WTO), and association to the European Union, BH have an obligation to become member of the Unions, Conventions, Treaties in the Intellectual Property field. Furthermore BH have an obligation to meet all conditions of those documents and to fully implement them and enforce.

At the present BH participate in following international conventions:

- Convention Establishing the World Intellectual Property Organization - WIPO Convention;
- Paris Convention for the Protection of Industrial Property – Paris Union;
- Madrid Agreement Concerning the International Registration of Marks – Madrid Union;
- Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks – Nice Union;
- Locarno Agreement Establishing an International Classification for Industrial Designs – Locarno Union;
- Berne Convention for the Protection of Literary and Artistic Works – Berne Union;
- Patent Cooperation Treaty PCT – PCT Union;
- Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (Satellites Convention).

Institutional framework

The Institute for Standards, Metrology and Patents of Bosnia and Herzegovina is established in October 1992. One of the activities of Institute is administrative and expert activities in the area of industrial property rights.

Law of foundation of the Institute for Standards, Metrology and Intellectual Property of Bosnia and Herzegovina³⁹ has been the legal basis for establishing of the Institute for Standards, Metrology and Intellectual Property of Bosnia and Herzegovina, as legal successor of the Institute for Standards, Metrology and Patents of Bosnia and Herzegovina. Establishing of the Institute for Standards, Metrology and Patents on level of BH was important for strengthen of state institution building.

The Institute for Standards, Metrology and Intellectual Property of Bosnia and Herzegovina is an independent State administrative institution responsible for administrative and other issues. The Ministry in charge for the issues dealt by the Institute is the Ministry of Foreign Trade and Economic Relations of BH.

According the relevant laws in BH and international convention ratified by BH responsibility of the Institute for Standards, Metrology and Intellectual Property of Bosnia and Herzegovina in the area of Intellectual Property Rights Protection consist of managing administrative procedure for acquisition and protection Industrial Property Rights on patents, trademarks, industrial designs, geographical indications and Copyright and Related Rights. The other important responsibility of the Institute is international cooperation with corresponding national institutions of other countries as well as regional and international organizations. Preparation and implementation of international contracts, agreements as well as the accession to the international conventions in the intellectual property field and

³⁹ Official Gazette BH No. 29/00 i 19/01

national legislation in the same field belong to the duties of the Institute as well. The Institute also is involved in publishing activities.

As an organizational structure within the Institute for Standards, Metrology and Intellectual Property of Bosnia and Herzegovina, Department for intellectual property is in charge of affairs in area of intellectual property rights.

The other relevant institutions responsible for intellectual property protection and enforcement in BH are courts on different level (principals, cantonal), Court of Bosnia and Herzegovina, Market Inspection Agencies and Police.

As already mentioned, one of the requirement of Feasibility Study is transformation of the Institute for Standards, Metrology and Intellectual Property of Bosnia and Herzegovina into three independent institute. One of these institutes will be the Institute for Intellectual Property of Bosnia and Herzegovina. Already that process in the procedure. The problem in institutional building is foreseen moving of the Institute to Mostar (as it is foreseen by the legislation just confirmed by the Parliamentary Assembly). This might imply dispersion of human resources already trained and experienced in this area.

Institute until now have established procedure and practice in the area of Industrial property rights. Area of copyright and related rights is not adequately addressed by the institutions of BH. There are only attempts by several private agencies and high level of dissatisfaction of authors.

Legal framework

Legal basis of intellectual property rights in BH consist of Industrial Property Law of Bosnia and Herzegovina, Law on the Amendment of the Industrial Property Law of Bosnia and Herzegovina and Law on Copyright and Related rights in Bosnia and Herzegovina.

According to the intellectual property protection and enforcement, Industrial Property Law of Bosnia and Herzegovina and Law on Copyright and Related Rights of Bosnia and Herzegovina provide for: administrative protection, judicial protection, provisional measures, measures taken by the Customs Authorities, punicial protection for misdemeanours and offences.

There are also several laws which are related with intellectual property rights on the level of BH and on levels of Republic Srpska and the Federation of Bosnia and Herzegovina. They are:

- Law on Customs Policy of Bosnia and Herzegovina⁴⁰;
- Law on Foreign Trade Policy of Bosnia and Herzegovina⁴¹;

⁴⁰ Official Gazette BH, No. 21/98, 34/00 and 10/02

Internal market in Bosnia and Herzegovina

Research paper

- Law on Consumers Protection of Bosnia and Herzegovina⁴²;
- Law on Trade⁴³;
- Criminal Law⁴⁴;
- Law on Economic Societies⁴⁵;
- Law on Market Inspection Agency⁴⁶;

By 31 December 2003, 10760 registrations of trade marks, 51587 registrations of international trade marks, 1636 registrations of patents, 214 registrations of industrial designs were handled within the intellectual property sector.

⁴¹ Official Gazette BH, No. 7/98

⁴² Official Gazette BH, No. 17/02

⁴³ Official Gazette Federation BH, No. 2/95 and Official Gazette Republic Srpska, No 16/96

⁴⁴ Official Gazette Federation BH, No. 43/98, 2/99, 15/99 and 29/00

⁴⁵ Official Gazette Federation BH, No. 23/99 and 01/02

⁴⁶ Official Gazette Federation BH, No. 2/95

V. Summary of recommendations

Short-term recommendation

Short term recommendations cover period for the next 1 – 2 years.

- ❖ ATM – enforce by the 31st of December of 2005. If an SAA will not be negotiated by that time (what is really hardly achievable) and Interim agreement⁴⁷ will not come to the force there might be a possibility of a legal vacuum for the export to the EU market. Therefore maximum should be made in order to prevent putting BH economic operators into unfavourable position at that time. It should be avoided that there is no legal basis for the export on the EU market.
- ❖ Adopt single labor law on the state level and thus create single labor market in BH which would easily integrate into the EU labor market and provide free movement of workers, in accordance with the EU requirements.
Replace the obsolete structure of the pensions and disability insurance funds, through structural changes of the entire system both of pensions and health insurance.
- ❖ Regarding the right of establishment:
 - Harmonize entities' company laws with EU legislation
 - During law drafting process examine justifiability of required registration documents and permissions;
 - eliminate duplicate or unnecessary forms in order to further simplify registration procedureEmployment conditions applying for a foreign national are already described in the part on free movement of workers. It is necessary to note that the laws in force do not regulate enter and employment of foreign nationals as “key personnel” in the sense of “key personnel” definition in a SSA.
 - introduce provisions on “key personnel” in national legislation
- ❖ Recommendations in the customs area are as follows:
 - To finish the customs administration reform (unification of the Entity administrations, establishment of the single account for customs revenues, new territorial organization, reduction of staff levels, IT integration);
 - To continue with introduction of customs tariff as harmonised with the Customs Code (EU Customs Law);
 - To improve and accelerate inspection of cross border goods transport;

⁴⁷which, amongst other provisions, provides for further trade liberalization, but on an asymmetrical basis

- To harmonize customs practice with the EU standards and launch negotiations with the EU on these issues. In line with this, the “Blue Book” guidelines to be followed are:
 - To intensify consistent implementation of customs regulations and continue with the customs staff training;
 - As EU support, to introduce the up-built system for customs procession (Alyss);
 - To increase cooperation with EU in respect of customs investigations;
 - To create conditions for adequate veterinary and phyto-sanitary control;
 - To start introduction of single administrative document and electronic connection with EU transit system;
 - To strengthen the State Border Service for the reason of prevention of crime (goods smuggling).
- ❖ The taxation reforms continuity in BH is vital, and main reform areas are as follows:
- Abandoning analytic taxes and introduction of synthetic tax on income;
 - Continued taxation system harmonisation in respect to EU countries, as within B-H, highlighting adoption of single, roof laws, rather than harmonising Entity regulations;
 - Taxation Administration reform, training, IT equipping, corruption suppression by better control system in place, different regional arrangement and reduction of offices;
 - Reform of social taxation, so that the contribution rate will be harmonised with that of the transition countries and bring the country closer to EU.

Long-term recommendation

Long term recommendations cover period for the next 3 – 4 years.

In general, further strengthen state level ministries - particular emphasis should be put on the human resources development in specific areas of importance for further development of single economic space in BH:

- competition and consumer protection,
- public procurement,
- mutual recognition of products,
- further development of standards, accreditation and metrology,
- upgrading conformity assessment infrastructure,
- improving single business registration system

In accordance with mentioned, there is a need for:

- ❖ establishing state level ministries dealing with internal market issues, including functions of the Ministry of Economy, Ministry of Industry, Ministry of Agriculture.

- ❖ ensuring the freedom of movement of workers both for workers from the EU (and their families) and workers from BH, respectively.
A substantial part of the *acquis* concerning the mutual recognition of diplomas and qualifications (55 directives) has already been taken on board and full approximation is expected in the medium term.
- ❖ Transferring of fiscal sovereignty from Entities to State for indirect taxes (July 1, 2005), i.e. to give the State its fiscal sovereignty for financing institutions of State and unification of Entity customs services at state level.

VI. Conclusions

In general, there is a need for strengthening of Single Economic Space in BH.

Related to mentioned, some actions - such as development of trade facilities and improvement of free movement of goods, should be put in focus.

Adopted legislation have to be implemented - in accordance with that new institutions have to be established. In general, there is a need for further strengthening state level ministries - particular emphasis should be put on the capacity building in the area of policy planning and analysing.

List of abbreviations and acronyms

| No | Abbreviations or acronym | Meaning |
|----|--------------------------|---|
| | SAP | Stabilisation and Association Process |
| | SAA | Stabilisation and Association Agreement |
| | ATM | Autonomous Trade Measures |
| | FTA | Free Trade Agreement |
| | S&M | Serbia and Montenegro |
| | BH | Bosnia and Herzegovina |
| | MIP | Multiannual Indicative Program |
| | Phare-PRAQIII | Poland and Hungary Assistance for the Reconstruction of Economy – Regional Programme on the Quality Assurance |
| | CARDS | Community Assistance for the Reconstruction Development and Stabilisation |

Internal market in Bosnia and Herzegovina
Research paper

| | | |
|--|-------|--|
| | SES | Single Economic Space |
| | TAIEX | Technical Assistance Information Exchange Office |
| | CAFAO | Customs and Fiscal Assistance Office |
| | EP | European Partnership |
| | BATA | Institute for Accreditation |
| | ITA | Indirect Taxation Authority |
| | PA | Parliamentary Assembly |
| | IMF | International Monetary Fund |
| | BASMP | Institute for Standards, Metrology and Intellectual Property |
| | HQ | Headquarters |
| | VAT | Value added tax |
| | PRSP | Poverty Reduction Strategy Paper |
| | WTO | World Trade Organisation |
| | CTF | Consultative Task Force |
| | RS | Republika Srpska |
| | FBH | Federation of Bosnia and Herzegovina |

Annex I

Discriminatory measures of the national legislation of Bosnia and Herzegovina

| № | Internal market area* | Name of the legislative act | Text of the discriminatory provision(s) (including article) | Comments |
|----|--------------------------|---------------------------------|--|--|
| 1. | Free movement of workers | Labor law of RS | Article 24 “Federation of BH, in the sense of the paragraph 1 of this article shall not be deemed to be a foreign country” | Working in another entity of the same country treated almost like working in a foreign country. This problem treated as part of provisions of this law on sending workers abroad! |
| 2. | Free movement of workers | Law on employment of foreigners | Issuing of Working permit to foreigners on condition if foreigners have permission for permanent residence or temporary residence in FBH (u daljem tekstu FBH) and there aren't person in evidence of unemployed of Agency of Employment who satisfy requirements which employer requires for concluding Contract of work or Contract of doing temporary and periodical work. | Requirement of working permit is discriminatory from the perspective of European aquis regarding this area, although it is still not a requirement for BH authorities at this stage. |
| | | | | *Discrimination <i>per se</i> in the area of free movement of workers in BH can be seen from the fact that there is no single and uniform approach to this problem. <u>As a recommendation:</u> adopt labor law, social security law and other necessary |

Internal market in Bosnia and Herzegovina
Research paper

| | | | | |
|----|----------|---|---|---|
| | | | | legislation on the state level. |
| 3. | taxation | Legal act related to mineral waters production | In the mineral waters production the existing tax rates are as follows: 20% in F BH, 10% in RS and 8% in Brcko District (different tax rates mechanism), so they offer good grounds for manipulation. A special obstacle is the inter-Entity trade with the famous PO-FA invoices for excise goods, including beverages. | This way of trading in operational-technical sense depends on the taxation administration HQ of seller and buyer, and, absurdly, it is often more expensive then the margins. |
| 4. | taxation | The company based in FBH carries on its business through retail network (retail sales facilities and trade agents) in RS. | Retail sale facilities do not have the status of legal entity, and in relevant tax administration they got identification number and sales tax is regularly paid on payment accounts of the RS Public Revenues Office, in compliance with rates defied under the Law in RS. Registration of Entities with residence and business making in RS is done in appropriate institutions of FBH (according to company seat principle). Pursuant to this, the taxation accounting is accounting of contributions is done by rates valid in FBH, and payment (except Pension insurance payments) is done on account of RS Public Revenues Office with a note of municipality where a worker has residence. | The PIO contribution is paid for the account of FBH PIO Bureau, in line with Federal Finance Ministry guidelines form 2002. In some taxation offices opinions are controversial on this issue, which makes everyday operations more difficult. Also, the Law on Tax on Profit in RS and rulebook on its implementation from 2001 provides for a company as a taxpayer for tax on profit derived from operations carried on through permanent establishment situated in RS. Tax on profit in FB-H is paid by that company in |

Internal market in Bosnia and Herzegovina
Research paper

| | | | | |
|----|-----------------------------|--|---|--|
| | | | | whole, and refunding for possible presented and paid profit in RS is not allowed as a deduction – an example of double taxation. |
| 5. | Free movement of capital | The Law on Foreign Direct Investment Policy in BH, (Official Gazette of BH, No. 4/98) | <p>Article 4</p> <p>a) Regardless of the policy of free foreign direct investments in Bosnia and Herzegovina defined in Article 3 of this Law, a foreign share in the capital of a company involved in the production and sale of weapons, ammunition, explosives for military use, military equipment and public information shall not exceed 49% of the capital of the company.</p> <p>b) In case of investment in the sectors which are subject to restrictions referred to in paragraph (a) of this Article, foreign investors must obtain a prior approval from the responsible authority in the respective entity.</p> <p>c) The responsible authority in the respective entity shall inform the applicant about the decision within 30 days from the day of submission of the request for approval referred to in paragraph (b) of this Article. If the decision is not made within the said deadline, the direct foreign investment shall be considered to have been approved if the responsible authority failed to inform the applicant in writing about its decision to postpone the decision-making to the period after the expiration of a 30 day deadline.</p> <p>d) If the responsible authority in</p> | |

Internal market in Bosnia and Herzegovina
Research paper

| | | | | |
|----|---------------|--------------------------|---|--|
| | | | <p>the respective entity intends to postpone the issuance of the decision on the request for approval of a foreign investment to the period after the expiration of a 30 day deadline, it shall inform accordingly the applicant within the same deadline. The final decision and the reasoning about the foreign investment shall be submitted to the applicant within 90 days from the day of receipt of the request. If the decision is not made within a 90 day deadline, the foreign direct investment shall be considered as approved.</p> <p>e) The approval of the foreign direct investment referred to in this Article shall be permanent.</p> <p>f) The requirements for submission of the request shall be defined in the implementing regulations referred to in Article 21 of this Law and published simultaneously in the Official Gazette of BH and the Official Gazettes of the entities. “</p> <p>Article 12</p> <p>Foreign investors shall have the same rights to real estate as the individuals who have the citizenship of Bosnia and Herzegovina or belong to Bosnia and Herzegovina. Foreign investors from one of the successor states of the former Socialist Federal Republic of Yugoslavia shall enjoy such rights provided that the investors who have the citizenship of Bosnia and Herzegovina or belong to Bosnia and Herzegovina have the same rights in the successor state concerned. “</p> | |
| 6. | Free movement | The Ownership Act of the | Article 87 | |

Internal market in Bosnia and Herzegovina
Research paper

| | | | | |
|----|--------------------------|---|---|--|
| | of capital | Federation of BH, (Official Gazette of F BH, No. 6/98) | <p>Foreign physical and legal persons may be the owners of real estate as domestic physical and legal persons unless otherwise defined by the Federation law.</p> <p>Foreign physical persons may be the owners of the land and the facilities they acquired by heritage in the Federation of BH like the citizens of Bosnia and Herzegovina and of the Federation, unless otherwise stipulated by an international agreement. “</p> <p>Article 89</p> <p>A foreign physical person with permanent residence in the Federation may be the holder of the right of ownership over an apartment or a residential building and the construction land on which such facilities have been or will be constructed.”</p> | |
| 7. | Free movement of capital | The Ownership Act, (Official Gazette of SFRJ, No. 6/80) | <p>Article 82</p> <p>Foreign physical and legal persons may be holders of the right of ownership over real estate like the citizens of SFRYU, unless otherwise stipulated by the federal law. Foreign physical persons in the territory of SFRYU may, under the condition of reciprocity, be the holders of the right of ownership over the land or the building they acquired by heritage like the citizens of SFRYU, unless otherwise stipulated by the international agreement.</p> | |

* free movement of goods, free movement of persons, freedom to provide services, right of establishment, free movement of capital, taxation, public procurement, other

Annex II

Bosnia and Herzegovina's membership in international organisations and conventions related to the internal market

| No | Name of the organisation/convention | Date of membership |
|----|--|--|
| | | |
| | CEN Committee Europeenne Normalisation – European Committee for Standardisation – Corresponding member | 1997 |
| | CENELEC - - European Committee for Standardisation in the field of electro technic - Affiliate member | 1999 |
| | ETSI – European Telecommunication Standards Institute – Full member | 1997 |
| | ISO – International Standardisation Organisation – Full member | 1997 |
| | IEC – International Electro-technical Commission – Associated member | 1997 |
| | WTO/TBT Code of good practice in standardisation | |
| | ISO/CASCO – International Standardisation Organisation – Committee for Conformity Assessment | |
| | OIML – International Organisation for Legal Metrology | 1996 |
| | EA – European Cooperation for Accreditation | Application planned by the end of 2004 |

Internal market in Bosnia and Herzegovina
Research paper

| | | |
|--|---|-------------|
| | Convention Establishing the World Intellectual Property Organization - WIPO Convention | 01.03.1992. |
| | Paris Convention for the Protection of Industrial Property – Paris Union | 01.03.1992. |
| | Madrid Agreement Concerning the International Registration of Marks – Madrid Union | 01.03.1992. |
| | Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks – Nice Union | 01.03.1992. |
| | Locarno Agreement Establishing an International Classification for Industrial Designs – Locarno Union | 01.03.1992. |
| | Berne Convention for the Protection of Literary and Artistic Works – Berne Union | 01.03.1992. |
| | Patent Cooperation Treaty PCT – PCT Union | 07.09.1996. |
| | Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (Satellites Convention | 06.03.1992. |

together in European Union

